

APPEAL NO. 170141
FILED MARCH 1, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on December 8, 2016, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed extent-of-injury issue by deciding that the compensable injury of (date of injury), does not extend to lumbar spondylosis with disc bulges at L2-3, L3-4, and L4-5; disc herniations at L2-3, L3-4, and L4-5; neural foraminal narrowing on the right at L4-5; and neural foraminal narrowing on the left at L5-S1.

The appellant (claimant) appealed the hearing officer's determination arguing that the evidence supports a finding that the disputed conditions are part of the compensable injury. The respondent (carrier) responded, urging affirmance.

DECISION

Reversed and rendered.

The claimant was injured on (date of injury), when he was struck and run over by an automobile. The claimant testified that he was kneeling when he was struck and that his body passed under the automobile, from front to back. The parties stipulated that the compensable injury extends to at least a left pneumothorax; left pulmonary contusion; displaced ribs 1, 2, 3, 4, 5, 7, 8, 9, and 10; left hip dislocation; right and left sacral fractures; left femoral head fracture; left acetabular fracture; pubic fractures; and vascular injury right cervical carotid artery at C1-2.

The medical records in evidence reflect that the claimant was admitted to the hospital on (date of injury), the date of the accident, and on December 9, 2012, underwent closed reductions of right and left sacral fractures with percutaneous screw fixation; closed manipulative reduction of pubic rami fractures; application of an anterior pelvic external fixation; and closed manipulative reduction of a left acetabular fracture as well as placement and subsequent removal of an inferior vena cava filter. Following his release from the hospital, the claimant was admitted, on December 31, 2012, to a rehabilitation facility where he received additional treatment for approximately two months.

Following complaints of low back pain beginning shortly after the accident and reports of radiating pain to the legs, the claimant was referred for diagnostic testing. In evidence is an MRI report dated April 16, 2016, which notes that the claimant has mild to moderate lower/mild upper lumbar spondylosis with several disc bulges and disc

herniations at L2-3, L3-4, and L4-5; and mild to moderate neural foraminal narrowing on the right at L4-5 and left at L5-S1, the conditions in dispute at the CCH.

The claimant's treating doctor, (Dr. B) addressed extent of the compensable injury on April 21, 2016, when he stated:

[The claimant's] back trauma in 2012 was quite significant and I believe that his subsequent spine degeneration and chronic back pain syndrome, was accelerated by this 2012 injury.

On May 18, 2016, Dr. B stated:

. . . the 2012 injury was causative in creating [the claimant's] current spine pain and limitations. Therefore his current diagnoses are degenerative spinal disease secondary to the 2012 accident.

Finally, on July 21, 2016, Dr. B stated:

. . . the initial injury in 2012 is the proximate cause for the significant damage to [the claimant's] lumbar spine and therefore is responsible for his continued pain and physical disability at this time.

The claimant was examined on August 29, 2016, by (Dr. C), appointed by the Texas Department of Insurance, Division of Workers' Compensation (Division) as designated doctor to address extent of the compensable injury. Following his examination, Dr. C determined that the incident giving rise to the compensable injury was a substantial factor in bringing about the disputed conditions and without it, the disputed conditions would not have occurred. Specifically, Dr. C stated:

It is difficult to ascertain that these were not pre-existing, however, due to the mechanism of injury and his continued issues and evidence of sacral fractures, it is clear he had injuries to the lumbar and sacral spines. . . . The lumbosacral spine should be included as part of the compensable injury, practically speaking, it is impossible to be run over and rolled fracturing your pelvis, ribs and sacrum (part of the lumbosacral spine) and SI joint diastasis and not injure your lumbar spine. . . . Therefore, it's my opinion that although the disc bulges and disc herniations may be pre-existing, that is unlikely, but they were aggravated and resulted in lumbosacral injury confirmed by CT, MRI and x-rays.

The claimant was thereafter examined by the carrier's post-designated doctor required medical examination physician, (Dr. J) on November 2, 2016. In his report dated December 2, 2016, Dr. J noted a lack of clear evidence on the MRI of acute

traumatic pathology and expressed his opinion that the disputed conditions are consistent with chronic degenerative changes that are probably pre-existing in nature. Dr. J further indicated it was not clinically probable that the mechanism of injury was a substantial factor in bringing about the changes noted on the MRI study.

The hearing officer determined that the (date of injury), compensable injury does not extend to lumbar spondylosis with disc bulges at L2-3, L3-4, and L4-5; disc herniations at L2-3, L3-4, and L4-5; neural foraminal narrowing on the right at L4-5; and neural foraminal narrowing on the left at L5-S1. The medical records in evidence document that the claimant sustained a left pneumothorax; left pulmonary contusion; left and right broken and displaced ribs; right and left fractures of the sacrum; pubic fractures; and injury to his right carotid artery when he was hit and rolled under the automobile. Medical records in evidence further document complaints of low back pain and weakness beginning shortly following the compensable injury, including pain radiating into the lower extremities.

In reviewing a “great weight” challenge, we must examine the entire record to determine if: (1) there is only “slight” evidence to support the finding; (2) the finding is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust; or (3) the great weight and preponderance of the evidence supports its nonexistence. See *Cain v. Bain*, 709 S.W.2d 175 (Tex. 1986).

Under the facts of this case as discussed above, and given the mechanism and severity of the injury, the medical record in evidence, and the causation analysis contained in Dr. C’s report, the hearing officer’s determination that the compensable injury does not extend to lumbar spondylosis with disc bulges at L2-3, L3-4, and L4-5; disc herniations at L2-3, L3-4, and L4-5; neural foraminal narrowing on the right at L4-5; and neural foraminal narrowing on the left at L5-S1 is so against the great weight and preponderance of the evidence as to be clearly wrong and manifestly unjust. Accordingly, we reverse the hearing officer’s determination that the compensable injury of (date of injury), does not extend to lumbar spondylosis with disc bulges at L2-3, L3-4, and L4-5; disc herniations at L2-3, L3-4, and L4-5; neural foraminal narrowing on the right at L4-5; and neural foraminal narrowing on the left at L5-S1 and render a new decision that the compensable injury of (date of injury), does extend to lumbar spondylosis with disc bulges at L2-3, L3-4, and L4-5; disc herniations at L2-3, L3-4, and L4-5; neural foraminal narrowing on the right at L4-5; and neural foraminal narrowing on the left at L5-S1.

The true corporate name of the insurance carrier is **ARCH INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET, SUITE 900
DALLAS, TEXAS 75201.**

K. Eugene Kraft
Appeals Judge

CONCUR

Carisa Space-Beam
Appeals Judge

Margaret L. Turner
Appeals Judge